

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

1300 Restaurant Corp, an Illinois)
corporation,)
)
Plaintiff,)
)
v.) Case No.
)
Orbit Family Restaurant Inc., f/k/a New)
Omega Pancake House & Restaurant, Inc.,)
an Illinois corporation, and John Doe,)
an individual,)
)
Defendant.)

**COMPLAINT FOR TRADE MARK INFRINGEMENT,
UNFAIR COMPETITION AND RELATED CLAIMS**

1300 Restaurant Corp. (herein “Omega”), by its attorneys, Regas, Frezados & Dallas LLP, for its Complaint for Service Mark Infringement, Unfair Competition and Related Claims against defendants Orbit Family Restaurant, Inc., f/k/a New Omega Pancake House & Restaurant, Inc. (herein “New Omega”) and John Doe (New Omega and John Doe are collectively referred to herein as “Defendants”), states as follows:

Parties

1. Omega, doing business as Omega Restaurant & Pancake House, is an Illinois corporation with its principal office at 1300 West Ogden Avenue, Downers Grove, IL.
2. New Omega is an Illinois corporation with its registered office at 9821 N. Huber Ln., Niles, IL and its principal place of business at 4540 N. Route 59, Naperville, IL. New Omega incorporated on November 3, 2014 with the Illinois Secretary of State under the name “New Omega Pancake House and Restaurant, Inc.”

3. Upon information and belief, John Doe, whose name and address are not presently known but will be established through discovery, is a resident of Illinois.

4. John Doe owns, directs and controls the activities of defendant New Omega complained of herein.

Jurisdiction

5. This Court has jurisdiction original jurisdiction over this action, pursuant 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a), because it is a civil action asserting claims for trademark infringement under the Lanham Act, 15 U.S.C. §§ 1051, *et. seq.* Further, this Court has original jurisdiction, pursuant to 28 U.S.C. § 1338(b), over this action because it is a civil action which asserts a claim for unfair competition joined with a substantial and related claim under trademark law. Finally, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1337(a), over all other claims asserted in this action because they are so related to the claims for trademark infringement and unfair competition, over which this Court has original jurisdiction, that they form part of the same case or controversy.

Omega and Its Omega Pancake House Name and Mark

6. Omega is an Illinois corporation involved in the restaurant business. Omega's business uses products originating from other states and renders services to customers travelling across state boundaries. Omega advertises its services on the internet.

7. Since prior to the acts of Defendants complained of herein, Omega adopted and began to use the trade name and the service mark Omega Pancake House for a restaurant and bakery located at 1300 West Ogden Avenue, Downers Grove, IL and a restaurant and bakery located at 1823 Wise Road, Schaumberg, IL.

8. Omega has made a substantial investment in the construction, marketing and promotion of its Omega Pancake House restaurant and bakery.

9. As a result of Omega's advertising and promotional efforts, the Omega Pancake House has become well known to customers and potential customers.

10. Omega has registered its Omega Pancake House mark with the Illinois Secretary of State as Registration No. 099920. A true and correct copy of a Trademark/Service Mark Detail Report from the Illinois Secretary of State is attached hereto as "Exhibit A."

11. Omega's Omega Pancake House name and mark are valuable assets of Omega and represent substantial goodwill.

Defendants' Willful Adoption of an Infringing Name and Mark

12. In or about November of 2014, Defendants made preparations to open a restaurant facility at 4540 N. Route 59, Naperville, IL using the name and service mark New Omega Restaurant & Banquet Hall. This location is approximately two miles from Omega's restaurant facility at 1300 West Ogden Avenue, Downers Grove, IL.

13. The New Omega Restaurant & Banquet Hall name and mark used by Defendants is a simulation and colorable imitation of the Omega Pancake House name and mark long used for Omega's facility in Downers Grove, Illinois.

14. On information and belief, Defendants knew of Omega's successful business, and the use of the New Omega Restaurant & Banquet Hall name and mark by Defendants is for the purpose of having persons believe that Defendants are associated with Omega, or are the successors to Omega.

15. Even prior to the opening of Defendants' restaurant facility, Omega has experienced actual confusion of its customers and others caused by Defendants' use of their New Omega Restaurant & Banquet Hall name and mark.

16. On information and belief, Defendants are fully aware of the actual confusion of costumers and others caused by Defendants' use of their New Omega Restaurant & Banquet Hall name and mark.

17. Defendants' aforesaid acts are likely to cause, and have caused, confusion, mistake or deception in that persons are likely to believe that Defendants' services are Omega's services or services that are sponsored or approved by Omega or in some way related to Omega.

18. On information and belief, Defendants will make profits and gains to which they are not entitled through use of Defendants' New Omega Restaurant & Banquet Hall name and mark.

19. Defendants' use of the New Omega Restaurant & Banquet Hall name and mark is intentional and willful.

20. Omega has contacted Defendants and demanded that Defendants discontinue all use of any name or mark confusingly similar to the Omega Pancake House name and mark.

21. After Omega demanded that Defendants cease and desist from using Omega's mark, New Omega changed its corporate name from "New Omega Pancake House & Restaurant Inc." to "Orbit Family Restaurant, Inc."

22. However, New Omega continues to use the name and mark New Omega Restaurant & Banquet Hall in connection with its restaurant facility at 4540 N. Route 59, Naperville, IL, including the display of signs advertising the restaurant as New Omega Restaurant & Banquet Hall.

23. Defendants' aforesaid acts are greatly and irreparably damaging to Omega and will continue to damage Omega unless restrained by this Court; wherefore Omega is without an adequate remedy at law.

Count I –Trademark Infringement

24. Omega adopts by reference the allegations set forth in Paragraphs 1-23 of its Complaint for Trade Mark Infringement and Unfair Competition as Paragraph 24 of this Count I, as though fully set forth herein.

25. Defendants' aforesaid acts constitute infringement of Omega's Omega Pancake House name and mark in violation of the Lanham Act, 15 U.S.C. §§ 1051-1127; the Illinois Trademark Registration and Protection Act, 765 ILCS 1036/1 *et. seq.* and the common law of the state of Illinois.

PRAAYER FOR RELIEF - Omega requests that:

A. Defendants, their agents, servants, employees, and attorneys, and any and all persons in active concert or participation with Defendants, be enjoined and restrained from using any name or mark which is substantially identical to, confusingly similar to, or a colorable imitation of Omega's aforesaid Omega Pancake House name and mark.

B. Defendants be required to deliver up for destruction, all signage, brochures and other promotional pieces, letterhead, business cards and other materials bearing a colorable imitation of Omega's Omega Pancake House name and marks.

C. Defendants be required:

- (i) to account for and pay over to Omega, all gains, profits, enrichments and advantages derived by Defendants from their acts complained of herein;
- (ii) to pay to Omega, three times the amount of all damages incurred by

Omega and profits gained by Defendants by reason of Defendants' acts complained of herein; and

- (iii) to pay to Omega the costs of this action and Omega's reasonable attorney fees and disbursements incurred herein.

D. This Court grant such further or other relief as this Court deems just and equitable.

Count II – Unfair Competition

26. Omega adopts by reference the allegations set forth in Paragraphs 1-23 of its Complaint for Trade Mark Infringement and Unfair Competition as Paragraph 26 of this Count II, as though fully set forth herein.

27. Defendant's aforesaid acts constitute unfair competition.

PRAAYER FOR RELIEF - Omega requests that:

A. Defendants, their agents, servants, employees, and attorneys, and any and all persons in active concert or participation with Defendants, be enjoined and restrained from using any name or mark which is substantially identical to, confusingly similar to, or a colorable imitation of Omega's aforesaid Omega Pancake House name and mark.

B. Defendants be required to deliver up for destruction, all signage, brochures and other promotional pieces, letterhead, business cards and other materials bearing a colorable imitation of Omega's Omega Pancake House name and marks.

C. Defendants be required:

- (i) to account for and pay over to Omega, all gains, profits, enrichments and advantages derived by Defendants from their acts complained of herein;
- (ii) to pay to Omega all damages incurred by Omega by reason of Defendants'

acts complained of herein; and

- D. This Court grant such further or other relief as this Court deems just and equitable.

Count III – Deceptive Trade Practices

28. Omega adopts by reference the allegations set forth in Paragraphs 1-23 of its Complaint for Service Mark Infringement and Unfair Competition as Paragraph 28 of this Count III, as though fully set forth herein.

29. Defendants' aforesaid acts constitute deceptive trade practices, in violation of the Deceptive Trade Practices Act of Illinois, 815 ILCS 510/1 *et. seq.*

PRAYER FOR RELIEF - Omega requests that:

A. Defendants, their agents, servants, employees, and attorneys, and any and all persons in active concert or participation with Defendants, be enjoined and restrained from using any name or mark which is substantially identical to, confusingly similar to, or a colorable imitation of Omega's aforesaid Omega Pancake House name and mark.

B. Defendants be required to deliver up for destruction, all signage, brochures and other promotional pieces, letterhead, business cards and other materials bearing a colorable imitation of Omega's Omega Pancake House name and marks.

C. Defendants be required to pay to Omega the costs of this action and Omega's reasonable attorney fees and disbursements incurred herein.

- D. This Court grant such further or other relief as this Court deems just and equitable.

Count IV – Consumer Fraud And Deceptive Business Practices

30. Omega adopts by reference the allegations set forth in Paragraphs 1-23 of its Complaint for Trade Mark Infringement and Unfair Competition as Paragraph 30 of this Count IV, as though fully set forth herein.

31. Defendant's aforesaid acts constitute deceptive business practices, in violation of the Consumer Fraud And Deceptive Business Practices Act of Illinois, 815 ILCS 505/1 *et. seq.*

PRAAYER FOR RELIEF - Omega requests that:

A. Defendants, their agents, servants, employees, and attorneys, and any and all persons in active concert or participation with Defendants, be enjoined and restrained from using any name or mark which is substantially identical to, confusingly similar to, or a colorable imitation of Omega's aforesaid Omega Pancake House name and mark.

B. Defendants be required to deliver up for destruction, all signage, brochures and other promotional pieces, letterhead, business cards and other materials bearing a colorable imitation of Omega's Omega Pancake House name and marks.

C. Defendants be required:

- (i) to account for and pay over to Omega, all gains, profits, enrichments and advantages derived by Defendants from its acts complained of herein;
- (ii) to pay to Omega, three times the amount of all damages incurred by Omega and profits gained by Defendants by reason of Defendants' acts complained of herein; and
- (iii) to pay to Omega the costs of this action and Omega's reasonable attorney fees and disbursements incurred herein.

D. This Court grant such further or other relief as this Court deems just and equitable.

Regas, Frezados & Dallas LLP

By: /s/ Steven M. Dallas
Attorneys for Omega

William D. Dallas (ARDC No. 6186780)
Steven M. Dallas (ARDC No. 6303138)
Peter G. Frezados (ARDC No. 0878030)
Regas, Frezados & Dallas LLP
20 N. Clark St., Suite 1103
Chicago, IL 60602
(312) 236-4400

EXHIBIT A

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SECRETARY OF STATE

Trademark / Service Mark Detail Report

Name of the Mark	OMEGA PANCAKE HOUSE	Registration Number	099920
Type of Mark	SERVICE	Class	043
Date of Registration	01/27/2009	Expiration Date	01/27/2019
First Use Any Where	01/01/1975	First Use In Illinois	01/01/1975
Description of Goods/Services	RESTAURANT SERVICES		
Name of Registrant	1300 RESTAURANT CORP.	Registrant Address	1300 W OGDEN AVE DOWNERS GROVE, IL 60515
Registrant Type	CORPORATION	Registrant State	IL
Assigned From	OMEGA DOWNERS GROVE, INC	Address	1300 W OGDEN AVE DOWNERS GROVE, IL 60515

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